

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

AT CHARLESTON

JASON CRADDOCK,

Plaintiffs,

v.

ADON NETWORK, INC.,

Defendant.

**CIVIL ACTION NO. 2:10-1401
On Removal from the Circuit Court of
Kanawha County, West Virginia
Civil Action No.: 10-C-2047**

NOTICE OF REMOVAL

To: Cathy Gatson, Clerk
Circuit Court of Kanawha County
111 Court Street
Charleston, West Virginia 25301

Todd Bailess, Esquire
Bailess Law, PLLC
227 Capitol Street
Charleston, West Virginia 25301

To the Judges of the United States District Court for the Southern District of West Virginia:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §1441, Defendant AdOn Network, Inc., by counsel, removes this action from the Circuit Court of Kanawha County, West Virginia, to the United States District Court for the Southern District of West Virginia on the following grounds:

I. FEDERAL QUESTION

1. On November 22, 2010, the Defendant was served by service upon the West Virginia Secretary of State, with a copy of a Summons and Complaint in an action commenced in that Circuit Court, entitled *Jason Craddock v. AdOn Network, Inc.*, Civil Action No. 10-C-2047. No further proceedings have occurred in state court. A copy of the Complaint is attached to this Notice as Exhibit A. A copy of the Kanawha County Circuit Court docket sheet is attached to this Notice as Exhibit B, and a complete copy of the Kanawha County Circuit Court file is attached to this Notice as Exhibit C.

2. In the lawsuit, the plaintiff asserts that he is entitled to certain wages for unpaid overtime for work actually performed in excess of 40 hours in a given workweek. (Complaint, ¶¶ 5, 9-10).

3. This Court has original federal question jurisdiction over this action under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.* Therefore, this action may be removed to this Court pursuant to 28 U.S.C. § 1441(b) without regard to the citizenship or residence of the parties or the amount in controversy.

a. The plaintiff has identified the West Virginia Wage Payment and Collection Act, West Virginia Code §21-5-1, *et seq.*, and the West Virginia Minimum Wage and Maximum Hours Standards for Employees Act, West Virginia Code §21-5C-1, *et seq.*, as the basis for his claims.

b. The Wage Payment and Collection Act does not provide a remedy for unpaid overtime wages or for failure to pay minimum wage. West Virginia Code §21-5-1, *et seq.*

c. The defendant is not subject to the Minimum Wage and Maximum Hours Standards for Employees Act because it is subject to the requirements of the Fair Labor Standards Act, and, therefore, is not an “Employer” within the meaning of the State law. West Virginia Code §21-5C-1(e). That is, West Virginia law requires an Employer to pay its employees minimum wage and at a rate of not less than one and one-half times an employee’s regular rate of pay for every hour actually worked in excess of 40 hours during one week. However, “if eighty percent of the persons employed by [the employer] are subject to any federal act relating to minimum wage, maximum hours and overtime compensation,” then the employer is exempt from state law requirements. *Id.*

d. The federal Fair Labor Standards Act establishes standards for minimum wage, maximum hours and overtime compensation. 29 U.S.C. §206-07. In addition, the federal Act also regulates the circumstances under which an employee is exempt from the federal statute’s overtime requirements. 29 U.S.C. §213. More than 80 percent of Defendant AdOn Network, Inc.’s employees are not exempt from the provisions of the Fair Labor Standards Act. Consequently, more than 80 percent of those employees are subject to the federal wage and hour law. Accordingly, the Defendant is exempt from state overtime compensation requirements and the plaintiff must bring his claims under federal law.

e. To the extent the plaintiff raises separate claims under the West Virginia Wage Payment and Collection Act, this Court has supplemental jurisdiction over those claims.

II. OTHER REMOVAL PREREQUISITES

1. This Notice of Removal is filed within 30 days after the Defendant received a copy of the initial pleading setting forth the claim upon which this action is based.

2. Promptly after filing of the Notice of Removal, a copy of this Notice will be filed with the Clerk of the Circuit Court of Kanawha County and the plaintiff will receive written notice of the filing of the Notice of Removal.

For these reasons, the Defendant has removed this action from the Circuit Court of Kanawha County, West Virginia, to the United States District Court for the Southern District of West Virginia. No further proceedings in this action may be had in the Circuit Court of Kanawha County, West Virginia.

Respectfully submitted,

ADON NETWORK, INC.

By Counsel

/s/ W. Scott Evans
W. SCOTT EVANS (WVSB # 5850)
JACKSON KELLY PLLC
500 Lee Street East, Suite 1600
P. O. Box 553
Charleston, West Virginia 25322
(304) 340-1000
wsevens@jacksonkelly.com
Counsel for Defendant

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CERTIFICATE OF SERVICE

I, W. Scott Evans, counsel for AdOn Network, Inc., do hereby certify that on December 22, 2010, I electronically filed the foregoing *Notice of Removal* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

Todd Bailess, Esquire
Bailess Law, PLLC
227 Capitol Street
Charleston, West Virginia 25301

I hereby certify that I have mailed the document by United States Postal Service to the following non-CM/ECF participant:

Cathy Gatson, Clerk
Circuit Court of Kanawha County
111 Court Street
Charleston, West Virginia 25301

/s/ W. Scott Evans